



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JULY 01, 2022

IN THE MATTER OF:

Appeal Board No. 622767

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 622766, an appeal was processed from the decision of the Administrative Law Judge filed April 4, 2022, which overruled the initial determination holding the claimant ineligible to receive benefits, effective March 15, 2021, to March 21, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification.

In Appeal Board Nos. 622767, the claimant appeals from the decision of the Administrative Law Judge filed April 4, 2022, which sustained the initial determination holding the claimant ineligible to receive benefits, effective March 22, 2021, to September 5, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

In Appeal Board No. 622766, it now appears that an appeal was inadvertently processed. The claimant has no standing to appeal as he prevailed with respect to the issue in this case.

In Appeal Board No. 622767, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for benefits on November 4, 2020,

which was made effective March 16, 2020. The claimant certified by phone for benefits for week through the week ending March 21, 2021. The claimant's certifications were accepted.

The claimant attempted to file for benefits after March 22, 2021. He heard a message that he did not have a claim on file. He could not certify. This was the same recorded message claimant received when he tried to contact the DOL. When the claimant did not receive benefits for the week ending March 21, 2021, by May 2021, he called the Department of Labor (DOL) and was able to speak with a representative. He was told that his application was being processed and that he had to wait for a letter from the DOL. The DOL was investigating the validity of his claim at that time. The claimant was not told that he had to refile his claim or to continue to certify.

OPINION: The credible evidence establishes that when the claimant attempted to certify for benefits after March 22, 2021, he was told that he had no claim on file. Without a claim on file the claimant was not able to certify for benefits. When the claimant spoke to a representative from the DOL he was advised to wait for a letter from the DOL. He was not advised to refile his claim and continue to certify on the new claim. The Board has held that there was good cause to backdate a claim was found where there was no evidence that the claimant was ever advised of the specific date on which claimant's benefit year ended and was not advised to file a new claim. (See Appeal Board No. 588216) In Appeal Board No. 552286 the Board again found good cause to excuse a failure to register where the DOL's telephone recorded message informed the claimant that he had exhausted his benefits but provided no further instructions as to refiling.

As the claimant was not advised as to the need to refile his claim or given any instruction from the DOL other than to wait for a letter, we conclude that the claimant had good cause not to continue to certify or to re-register his claim and that his claim should be backdated from March 22, 2021, to September 5, 2021.

DECISION: In Appeal Board No. 622676, the appeal of the Administrative Law Judge decision in 022-07332, is dismissed.

In Appeal Board No. 622676, the decision of the Administrative Law Judge in 022-07332, is continued in effect.

In Appeal Board 622677, the decision of the Administrative Law Judge in , is reversed.

In Appeal Board No 622677, the initial determination holding the claimant ineligible to receive benefits, effective March 22, 2021, to September 5, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER